

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-06-164

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF EMPIRE FIRE AND MARINE INSURANCE COMPANY,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Empire Fire and Marine Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated November 22, 2005 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as an accident and health insurance company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on November 22, 2005, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2004 to December 31, 2004.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, any and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Certifying and using forms that do not comply with Colorado insurance law. The Respondent shall provide evidence demonstrating that it has corrected all applicable certified forms to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue E1 concerns the following violation: Failure to provide benefits for covered services based on a licensed provider's status, e.g., an immediate family member residing in the home of the insured person or being the employer of an insured's immediate family member. The Respondent shall provide evidence that it has revised all applicable forms to reflect that benefits may not be denied solely based on a provider's status; e.g., a immediate family member or a business or professional associate of the member or their family, to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue E2 concerns the following violation: Failure to reflect wording that would allow coverage for intentional self-inflicted injury, suicide or attempted suicide while insane. The Respondent shall provide evidence that it has revised all applicable forms to reflect wording that would allow coverage for intentional self-inflicted injury, suicide or attempted suicide while insane to ensure compliance with Colorado insurance law. The

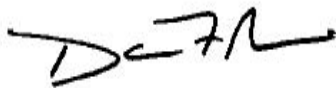
Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue E3 concerns the following violation: Failure to reflect correctly and completely the extent of coverage to be provided for hospice and home health care services. The Respondent shall provide evidence that it has revised all applicable policy forms to reflect correctly and completely the extent of coverage provided for hospice and home health care services to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue E4 concerns the following violation: Failure to reflect correct information as to when adopted children become dependents eligible for coverage. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct information as to when adopted children may become dependents eligible for coverage to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue E5 concerns the following violation: Failure to reflect that repairs of prosthetic devices, unless due to misuse or loss, are to be covered. The Respondent shall provide evidence that it has revised all applicable policies to reflect coverage of repairs of prosthetic devices unless due to misuse or loss to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue E6 concerns the following violation: Failure to reflect the availability of an independent external review in grievance procedures. The Respondent shall provide evidence that it has revised its procedures to reflect the availability of an independent external review in grievance procedures to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue E7 concerns the following violation: Failure to use the correct Standard Health Benefit Plan description form during 2004. The Respondent shall provide evidence that it has established procedures to ensure that the correct Colorado Standard Health Benefit Plan description form is used for Business Groups of One applying for individual health benefit plans in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

17. Issue H1 concerns the following violation: Failure to provide CoverColorado notice forms in all required instances. The Respondent shall provide evidence that it has established the necessary procedures to ensure that CoverColorado notice forms are provided in all required instances in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
18. Issue J1 concerns the following violation: Failure, in some cases, to pay, deny or settle claims within the required time periods. The Respondent shall provide evidence that it has established procedures to ensure that all claims are paid, denied or settled within the required time periods in compliance with Colorado insurance law.
19. Issue J2 concerns the following violation: Failure to accurately determine the number of days used for claim processing. The Respondent shall provide evidence that it has established procedures to ensure that the number of days used for claim processing is accurately determined in compliance with Colorado insurance law.
20. Issue J3 concerns the following violation: Failure, in some cases, to pay late payment interest and/or penalties. The Respondent shall provide evidence that in all applicable instances, it has established the necessary procedures to ensure that late payment interest and/or penalties are paid in compliance with Colorado insurance law. Respondent shall perform a self-audit to identify and provide that late payment interest and/or penalties are paid as they relate to this violation for the time period beginning January 1, 2004 to the date of this Order. Respondent shall submit a summary of the findings to the Division on or before June 23, 2006.
21. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of thirteen thousand and no/100 dollars (\$13,000.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
22. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.

23. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self-audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
24. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
25. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination Report dated November 22, 2005, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 24th day of March, 2006.



David F. Rivera
Commissioner of Insurance

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 24th day of March, 2006, I caused to be deposited the **FINAL AGENCY ORDER No. O-06-164 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF EMPIRE FIRE AND MARINE INSURANCE COMPANY**, in the United States mail via certified mailing with the proper postage affixed and addressed to:

Mr. Craig Fundum, President
Empire Fire and Marine Insurance Company
13810 FNB Parkway
Omaha, NE 68154-5202

Damian Sepanik, Regulatory Compliance Officer
Zurich North American Insurance Company
1400 American Lane, Tower 2, Floor 11
Schaumburg, IL 61096

A handwritten signature in black ink, appearing to read "Dolores Arrington". The signature is fluid and cursive, with the first name "Dolores" being more prominent than the last name "Arrington".

Dolores Arrington, AIE,AIRC,ACS,MA
Market Conduct Section
Division of Insurance